

United States Senate
WASHINGTON, DC 20510

November 30, 2022

The Honorable Martin J. Walsh
Secretary of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Walsh:

On November 22, 2022, the Department of Labor issued a final rule entitled, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights," which permits private-sector retirement plan sponsors to make investments based on environmental, social, and governance (ESG) factors. This rule will enable retirement plan fiduciaries to use the retirement savings of millions of Americans to further partisan political goals—against the interests of their investors. This will have a significant impact on Americans' retirement funds.

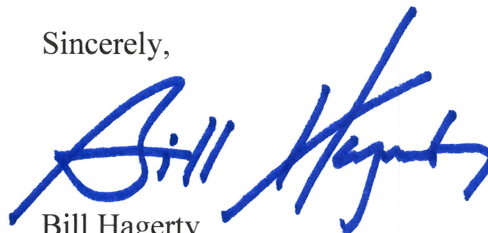
Given this broad impact, Congress should be setting American policy in this area, and therefore, it is imperative that this rule receives congressional review. Indeed, existing law requires such review, and I write to confirm that you will comply with the requirements of the Congressional Review Act (CRA) in issuing this rule.

Under the CRA, an agency action that falls within the definition of a "rule" must be submitted to Congress for review before it can take effect. 5 U.S.C. § 801(a)(1)(A). "The definition of a rule under the CRA is very broad." Government Accountability Office B-323772, at 3 (Sept. 4, 2012), available at <https://www.gao.gov/assets/b-323772.pdf>. In part, the CRA defines a rule as: "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. §551(4). This is not limited to directives requiring notice, public comment, or similar Administrative Procedure Act procedures.

Plainly, this rule, which substantially changes the regulations concerning private-sector retirement plans and the retirement savings of the tens of millions of Americans invested in such plans, is a rule for CRA purposes. So that Americans' elected representatives may timely review this rule as required under federal law, please confirm by Monday, December 12, 2022 that you will submit it to Congress before it purports to take effect.

Thank you, and I look forward to your reply.

Sincerely,



Bill Hagerty
United States Senator